

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 7119

BILL NUMBER: HB 1760

DATE PREPARED: Jan 15, 1999

BILL AMENDED:

SUBJECT: Bail bonds.

FISCAL ANALYST: Susan Preble

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FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (A) Specifies that a bail bond may be written only by an insurer;
- (B) Provides that if a bail bond is secured by real estate, the tax value of the real estate (less encumbrances) must be at least equal to two times the amount of bail;
- (C) Provides that a defendant who is charged with a nonviolent misdemeanor or nonviolent Class D felony and has resided continuously for the preceding five years in the county where the defendant is being charged or in a contiguous county may be required to post a cash deposit equal to an amount not less than the greater of: (1) \$50; or (2) 10% of the amount of the bail instead of a bail bond;
- (D) Provides that a defendant who: (1) is charged with a violent misdemeanor, a violent Class D felony, or any other felony or murder; or (2) has not resided continuously for the preceding five years in the county where the defendant is being charged or in a contiguous county may be required to execute a bond secured by real estate, post a cash deposit, or execute a bail bond in an amount equal to 25% of the amount of the bail.

Effective Date: July 1, 1999.

Explanation of State Expenditures:

Explanation of State Revenues: This bill provides that a defendant meeting certain qualifications can be required to post a cash deposit equal to 10% of the amount of the bail in lieu of a bail bond, and that a defendant meeting other qualifications can be required to post a cash deposit or execute a bail bond in an amount equal to 25% of the amount of the bail.

Explanation of Local Expenditures: It is possible that passage of this bill will increase the number of criminal defendants who might be retained in jail because they could not afford bail. This proposal would decrease the number of criminal defendants who would be eligible to use the current cash bond system in

approximately 48 counties in Indiana. If a criminal defendant is charged with a violent crime, or lives outside of the contiguous area as specified in the bill, the criminal defendant would be limited to using bail bonds in order to avoid incarceration prior to trial. It is likely that this would result in an increase in the number of criminal defendants who would remain in jail prior to trial if they cannot afford a bail bond.

The additional number of persons who might be retained in jail was not able to be determined. During CY 1997, the courts reported 52,014 felony filings. The Indiana Sheriffs Association estimates that the daily cost of incarcerating one person in jail is \$44.

Explanation of Local Revenues: Depending upon the number of criminal defendants who currently deposit cash with the clerk of the court, passage of this bill potentially increases the proportion of these defendants who would execute bail bond with an insurer and potentially reduces the number of criminal defendants who currently deposit 10% of their cash bond with the clerk of the circuit court.

When a criminal defendant executes bail with a bail bondsman and fails to appear in court, a **Late Surrender Fee** based on a percent of the value of the bond is assessed against the bondsman. Half of the revenue from the Late Surrender Fee is deposited in the **Police Pension Trust Fund** while the other half is deposited in a **County Extradition Fund**.

Passage of this bill potentially increases revenue from the **Late Surrender Fee** if a proportionately greater percentage of criminal defendants use a bail bondsman. In addition, if the bondsman does not return the criminal defendant within 210 days of the mailing notice, the court declares 30% of the face value of the bond to be forfeited. The forfeited amount is deposited into the **Common School Fund**. Local governments reported \$807,165 in CY 1997 from the **Late Surrender Fee**. A separate amount was not available on the level of forfeitures that were deposited into the **Common School Fund**.

When a criminal defendant executes bail through a 10% cash deposit with the Clerk of the Circuit Court, the clerk has the option to collect a **Bond Administration Fee** of 10% of the bail bond or \$50, whichever is less. Local governments reported collecting \$969,648 in bond administration fees in CY 1997. In addition, if the criminal defendant has used public defender services, the court must order the clerk to remit the difference, if any, and retain the rest between the bond deposit and the cost of pauper defense. The retained amount is deposited in the **Supplemental Public Defender Services Fund**. During CY 1997, \$954,637 was collected in **Supplemental Public Defender Fees**.

If fewer criminal defendants post a cash deposit with the clerk of the circuit court because they are required to deposit the full bail with the clerk, the revenue from both the bond administration fee and the supplemental public defender fee will decline. This would affect revenue in the **county general fund**.

The bill also provides that a court, when requiring a person to post a cash deposit in lieu of a bail bond, must also require the person to execute an agreement allowing the court to retain all or a part of the cash or securities to satisfy any fines and costs if the defendant is convicted. This provision would not increase the amount owed to the court. However, it would enhance the ability of the court to collect any court costs owed by the defendant, through any funds remaining from a defendant's 10% bail bond. Of the amount collected through court costs in the circuit, superior, county, municipal and probate courts, the clerk distributes 27% for deposit in the county general fund and 3% to the local municipal fund (only if a city or town maintains a law enforcement agency that prosecutes at least 50% of its ordinance violations in a circuit, superior, county or municipal court in the county). Of the court costs collected through the city or town courts 20% is distributed to the county general fund and 25% to the city or town general fund.

State Agencies Affected:

Local Agencies Affected: Trial courts; circuit court clerks; local law enforcement agencies; jails.

Information Sources: 1997 Indiana Judicial Report, Vols. I & III.